

REMARKS

In the foregoing listing of claims, Applicants amend claims 25 and 28 by further defining a method of inhibiting formation of advanced glycation end products and/or inhibiting aldose reductase activity in a human in need thereof “except for a human having diabetes.” Applicants respectfully request favorable consideration and allowance of the inventions defined in claims 25 – 30 for at least the following reasons.

In the Office Action mailed March 22, 2010, the Examiner took the position that certain terminology in the present claims encompasses a human having diabetes. Applicants do not believe that the Examiner previously took such a position. Thus, prior to the time of filing this response, Applicant had no opportunity to amend the claims in response to this position of the Examiner. At least for this reason, Applicants respectfully request that the foregoing amendments be entered under the provisions of 37 C.F.R. § 1.116(b) for the purposes of placing the application in condition for allowance or for the purposes of appeal.

Telephone Interview

Applicants greatly appreciate the courtesies extended the undersigned by Examiner Elli Peshev in a telephone interview on July 7, 2010. During the interview, amendments to the claims were discussed. The Examiner indicated that

amending claims 25 and 28 by adding the expression “except for a human having diabetes” thereto, as set forth in the foregoing amendments, should patentably distinguish claims 25 and 28 from the combined teachings of Matsumoto (European Patent No. 1 318 201 A1), Bailey (US 6,780,442), and Rahbar (US 6,605,642).

Claim Rejection – §103(a)

The Examiner included a rejection of claims 25 – 30 under 35 U.S.C. §103(a) as being unpatentable over Matsumoto with Bailey and Rahbar. Applicants respectfully traverse this rejection for reasons that follow.

Applicants’ claims 25 and 28 recite a method of inhibiting formation of advanced glycation end products and/or inhibiting aldose reductase activity in a human in need thereof “except for a human having diabetes,” which comprises administering to the human a composition comprising anthocyanin and having activity of inhibiting advanced glycation end product formation and/or inhibiting aldose reductase activity. The expression “except for a human having diabetes” is added by the current amendments.

Among other things, the Examiner stated that the Specification on page 12, lines 2-5, states an inhibitor of AGE and aldose reductase is very useful as a preventative and therapeutic agent against various diabetes complications. Based

thereon, the Examiner took the position that the terminology in the present claims, “a human in need thereof,” encompasses treating a human having diabetes as apparently shown in the cited prior art.

While Applicants do not agree with the Examiner’s position, in the foregoing amendments, Applicants amend claims 25 and 28 by further defining a method of inhibiting formation of advanced glycation end products and/or inhibiting aldose reductase activity in a human in need thereof “except for a human having diabetes.” Applicants’ amended claims do not encompass treating a human having diabetes, and therefore are patently distinguishable from the teachings of Matsumoto, Bailey and Rahbar. In the telephone interview, Examiner Peselev stated that claims as amended in this amendment should patently distinguish over Matsumoto, Bailey and Rahbar.

Conclusion

At least for the foregoing reasons, Applicants respectfully submit that claims 25 – 30 are patently distinguishable from the teachings of Matsumoto, Bailey, and Rahbar within the meaning of 35 U.S.C. §103(a). Therefore, Applicants respectfully request that the Examiner reconsider and withdraw this rejection and allow claims 25 – 30.

Applicants believe that the foregoing is a complete and proper response to the Office Action mailed March 22, 2010. While it is believed that all claims in this application are in condition for allowance, if the Examiner has any comments or questions, Applicants invite the Examiner to telephone the undersigned at the below listed number to resolve any outstanding issues.

In the event this paper is not timely filed, Applicants hereby petition for an appropriate extension of time. The Commissioner is hereby authorized to charge the fee therefor, as well as any other fees that become due, to our Deposit Account No. 50-1147.

Respectfully submitted,

/R. Eugene Varndell, Jr./
R. Eugene Varndell, Jr.
Attorney for Applicants
Reg. No. 29,728

Posz Law Group, PLC
12040 South Lakes Drive
Suite 101
Reston, VA 20191
Phone 703-707-9110
Customer No. 23400